drawn between cases where the expectation of receiving gratuities is, expressly or impliedly, part of the consideration for the contract of employment and the employee receives correspondingly less from the employer, and cases where the receipt of gratuities is not contemplated by the parties to the contract. See *Reynolds* v. *Smith*, 1 Cal. Industr. Acc. Comm., pt. 2, 35; *contra*, *Knott* v. *Tingle, Jacobs & Co.*, 4 Butterworth W. C. C. 55.

MUNICIPAL CORPORATIONS — DEBTS AND CONTRACTS — LIABILITY FOR SERVICES PERFORMED UNDER VOID CONTRACT. — The board of election commissioners of the defendant city contracted with the plaintiff for the purchase of one thousand voting machines. The plaintiff delivered two hundred which the board accepted and paid for. Three hundred more were then accepted. Thereupon the board was restrained in a taxpayer's suit from accepting any more machines. The plaintiff sued for the contract price. A statute provided that no contract should be made without a prior appropriation therefor (1917 ILL. REV. STAT., c. 24, § 91). No appropriation had been made. *Held*, that the plaintiff cannot recover. *Empire Voting Mach. Co.* v. *Chicago*, 267 Fed. 162 (C. C. A.).

Statutes like that in the principal case are generally considered mandatory. *Roberts* v. *Fargo*, 10 N. D. 230, 237, 86 N. W. 726, 729. It follows that contracts made in violation thereof are void. *Green* v. *Everett*, 179 Mass. 147, 60 N. E. 490; *Hurley* v. *Trenton*, 66 N. J. L. 538, 49 Atl. 518, aff'd, 67 N. J. L. 350, 51 Atl. 1109. But where the plaintiff has fully performed, recovery of at least the fair value of materials or services rendered is sometimes allowed. Various grounds are assigned as the basis of this recovery: estoppel, ratification, quasi-contract, general considerations of justice. See *Argenti* v. *San Francisco*, 16 Cal. 255, 274; *Conyers* v. *Kirk*, 78 Ga. 480, 3 S. E. 442; *Ward* v. *Forest Grove*, 20 Or. 355, 25 Pac. 1020; *Miles* v. *Holt County*, 86 Neb. 238, 125 N. W. 527; see 3 MCQUILLAN, MUNICIPAL CORPORATIONS, § 1181. Apart from serious technical objections to all of these grounds, allowing recovery qualifies and often almost vitiates the statutory command, so it is denied by the weight of authority. *Indianapolis* v. *Wann*, 144 Ind. 175, 42 N. E. 901; *Gutta-Percha Manufacturing Co.* v. *Ogalalla*, 40 Neb. 775, 59 N. W. 513. The minority view can perhaps be explained by a failure to distinguish between mandatory and merely directory provisions. Violation of the latter is usually held to make the contract voidable only; in such a case even if the contract is avoided compensation for the executed consideration is properly granted. *Wentink* v. *Passaic*, 66 N. J. L. 65, 48 Atl. 609; see 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 793. The practical hardship of denying any pecuniary remedy when the contract is void is mitigated by allowing the plaintiff to regain in specie what he has given, where, as in the principal case, that is physically possible. *Chapman* v. *Douglas*, 107 U. S. 348; see *La France Engine Co.* v. *Syracuse*, 33 Misc. 516, 519, 68 N. Y. Supp. 894, 897.

MUNICIPAL CORPORATIONS — GOVERNMENTAL POWERS AND FUNCTIONS — RIGHT TO AUTHORIZE NUISANCES IN CITY STREETS. — The city of Buffalo authorized the erection, by a private company, of twenty-five news-stands on the city streets. The Supreme Court issued a peremptory writ of mandamus to the city council directing an order for their removal. *Held*, that the writ be sustained. *People ex rel. Hofeller* v. *Buck*, 193 App. Div. 262, 184 N. Y. Supp. 210.

Any unauthorized encroachment upon a street or highway constitutes a nuisance *per se*, and may be abated, even though it does not actually operate as an obstruction to travel. *State* v. *Berdetta*, 73 Ind. 185; *Lacey* v. *Oskaloosa*, 143 Ia. 704, 121 N. W. 542. See 2 ELLIOTT, ROADS AND STREETS, 3 ed., § 828. In the absence of legislative authority, a municipality has no right to authorize

the creation of a nuisance in its streets. *People* v. *Harris*, 203 Ill. 272, 67 N. E. 785; *Commonwealth* v. *Morrison*, 197 Mass. 199, 83 N. E. 415. There is some contrary authority which seems to allow the authorization of street obstructions which are public conveniences. *Wallace* v. *Canandaigua*, 117 N. Y. Supp. 912; *Savage* v. *Salem*, 23 Ore. 381, 31 Pac. 832. But these decisions are not consonant with the settled rule which requires strict construction of charters and statutes as to municipal powers. See 1 McQUILLIN, MUNICIPAL CORPORATIONS, § 353. Sounder principles have led to the denial of the right to authorize such public conveniences as hitching posts, a band stand, a voting booth, and an electric lighting plant. *Lacey* v. *Oskaloosa*, *supra; Atterbury* v. *West*, 139 Mo. App. 180, 122 S. W. 1106; *Haberlil* v. *Boston*, 190 Mass. 358, 76 N. E. 907; *McIlhinny* v. *Trenton*, 148 Mich. 380, 111 N. W. 1083. On the same grounds, the right to authorize the erection of lunch, fruit, and news stands has been specifically denied. *Costello* v. *State*, 108 Ala. 45, 18 So. 820; *Pagames* v. *Chicago*, 111 Ill. App. 590. See *People ex rel. Pumpyansky* v. *Keating*, 168 N. Y. 390, 61 N. E. 637.

RULE AGAINST PERPETUITIES — OPTION TO PURCHASE FEE — VALIDITY IN EQUITY AND AT LAW. — A contract provided, *inter alia*, that the V. M. Co., would at any time within 25 years at the option of H or his assigns convey a certain plot of land upon the payment of a fixed sum. The assignee of H, the plaintiff corporation, chose to exercise the option, but the defendant corporation, successor to the V. M. Co., refused to convey. The plaintiff seeks alternatively specific performance in equity, or damages at law for breach of contract. *Held*, that no relief can be granted. *Eastman Marble Co.* v. *Vermont Marble Co.*, 128 N. E. 177 (Mass.).

The option is, by the better view, unenforceable in equity. *London & South Western R. Co.* v. *Gomm*, 20 Ch. D. 562; *Winsor* v. *Mills*, 157 Mass. 362, 32 N.E. 352. *Contra*, *Hollander* v. *Central Metal & Supply Co.*, 109 Md. 131, 71 Atl. 442. Upon the question whether the contract is void at law so that damages cannot be recovered, the court is confessedly at variance with the only other direct authority upon the precise point. See *Worthing Corp.* v. *Heather*, [1906] 2 Ch. 532. Tending to support the English result are the decisions that the rule against perpetuities does not apply to contracts but merely to limitations upon property. *Walsh* v. *Sec. of State for India*, 10 H. L. C. 367. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., §§ 329–330 c. On the other hand, it is argued, as in the principal case, that there is a general policy against restraints upon alienation, of which the rule against perpetuities is merely one manifestation. And it is contended that any contract infringing this policy is entirely analogous to a contract against public morals. See 20 HARV. L. REV. 240; 51 SOL. J. R. 648; 51 *id.*, 669. The force of this argument must be conceded. Yet it is questionable whether the policy is strong enough to justify an extension of a property rule to the law of contracts. Moreover, arguments based upon a general policy are bound to interfere with the certainty in application of fixed rules, which is desirable in property law.

STATUTE OF FRAUDS — PROMISE TO ANSWER FOR DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER — CONSIDERATION MOVING DIRECTLY TO THE PROMISSOR. — The defendant was the owner of a house upon which the plaintiff had a lien for wages due from a contractor. The defendant orally promised the plaintiff that if the latter did not enforce the lien, he would pay the plaintiff the wages due. *Held*, that the promise was not within the Statute of Frauds. *Bova* v. *Scorpio*, 110 Atl. 417 (R. I.).

The principal case is one in which most courts would hold that the surrender of security to a new promissor by the creditor prevents the promise from falling within the Statute of Frauds. *Johnson* v. *Huffaker*, 99 Kan. 466, 162 Pac. 1150;